

1  
2  
3  
4  
5                   IN THE UNITED STATES DISTRICT COURT  
6                   FOR THE WESTERN DISTRICT OF WASHINGTON

7                   EQUAL EMPLOYMENT OPPORTUNITY  
8                   COMMISSION,

9                   Plaintiff

10                  v.

11                  SAFEWAY, INC.,

12                  Defendant

13                   CIVIL ACTION NO. 2:18-cv-01352

14                   [PROPOSED]

15                   JURY TRIAL DEMAND

16                   NATURE OF THE ACTION

17                  This is an action under Title I of the Americans with Disabilities Act, as amended by the  
18                  ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et. seq.*, (ADA and ADAAA) to correct  
19                  unlawful employment practices on the basis of disability and to provide appropriate relief to Joel  
20                  Sibert, who is adversely affected by such practices. The Equal Employment Opportunity  
21                  Commission (EEOC or Commission) alleges that Safeway, Inc. (Defendant) discriminated  
22                  against Mr. Sibert, a deaf applicant, when it failed to provide a reasonable accommodation in the  
23                  interview process and failed to hire him.

JURISDICTION AND VENUE

1           1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,  
 2           1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the ADA,  
 3           42 U.S.C. § 2000e-5(f)(1) and (3) (Title VII), and pursuant to Section 102 of the Civil Rights Act  
 4           of 1991, 42 U.S.C. § 1981a.

5           2. The employment practices alleged to be unlawful were committed within the  
 6           jurisdiction of the United States District Court for the Western District of Washington.  
 7

PARTIES

8           3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the  
 9           United States of America charged with the administration, interpretation, and enforcement of  
 10          Title VII, and is expressly authorized to bring this action by Sections 107(a) of the ADA, 42  
 11          U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42  
 12          U.S.C. 2000e-4(f)(1).

13          4. At all relevant times, Defendant has been a corporation continuously doing  
 14          business in the State of Washington and employing at least fifteen (15) employees.  
 15

16          5. At all relevant times, Defendant has continuously been an employer engaged in an  
 17          industry affecting commerce under Section 101 (5) of the ADA, 42 U.S.C. §12111(5), and  
 18          Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701  
 19          (g) and (h) of Title VII, 42 U.S.C. §§2000e(g) and (h).

20          6. At all relevant times, Defendant has been a covered entity under Section 101(2) of  
 21          the ADA, 42 U.S.C. § 12111(2).  
 22

## **ADMINISTRATIVE PROCEDURES**

7. More than thirty (30) days prior to the institution of this lawsuit, Joel Sibert filed a charge of discrimination with the Commission alleging that Defendant discriminated against him in violation of the ADA.

8. By letter dated July 5, 2018, the Commission issued to Defendant a Determination finding reasonable cause to believe that Defendant violated the ADA and invited Defendant to join with the EEOC in informal methods of conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

9. The EEOC communicated with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the EEOC's Letter of Determination.

10. The EEOC was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

11. By letter dated August 16, 2018, the EEOC issued to Defendant notice that efforts to conciliate were unsuccessful and that further conciliation efforts would be futile or non-productive.

12. All conditions precedent to the institution of this lawsuit have been fulfilled.

## **STATEMENT OF CLAIMS**

13. Since at least August 28, 2017, Defendant has engaged in unlawful employment practices in violation of Section 102(a) of Title I of the ADA, 42 U.S.C. § 12112(a). Defendant discriminated against Joel Sibert when it failed to provide a reasonable accommodation to Mr. Sibert to enable a job interview and when it failed to hire him for a position at Store #1551 in Seattle, Washington, in violation of section 102(a) and (b) of the ADA.

1       14. Charging Party Joel Sibert is a qualified individual with a disability who, under  
2 sections 3 and 101(8) of the ADA, 42 U.S.C. §§ 12102 and 12111(8), can perform the essential  
3 functions of the position with or without reasonable accommodation. Mr. Sibert is deaf. He is  
4 substantially limited in the major life activities of hearing and communicating with others.

5       15. Mr. Sibert's physical impairment—deafness—is expressly identified as a  
6 disability in the ADAAA regulations. 29 C.F.R. §1630(2)(j)(3)(iii).

7       16. In 2017, Mr. Sibert filled out an application for employment on Respondent's  
8 website.

9       17. Mr. Sibert's application expressed interest in working in as a Food Clerk, Courtesy  
10 Clerk, Produce Clerk, and Starbucks Clerk.

11       18. Defendant reviewed Mr. Sibert's application, determined that he met the minimum  
12 qualifications for the job, and marked him eligible for an interview.

13       19. On August 28, 2017, the In-Store Recruiter for Defendant's Store #1551, called  
14 Mr. Sibert to ask him to attend an in-person interview for vacant positions she was filling for the  
15 store.

16       20. During this call Mr. Sibert informed the In-Store Recruiter that he was deaf and  
17 would require an American Sign Language (ASL) interpreter during his interview and during  
18 orientation for the position if he was hired.

19       21. The In-Store Recruiter told Mr. Sibert that she did not know about providing an  
20 interpreter for an interview and would call him back.

21       22. The In-Store Recruiter did not call Mr. Sibert back.

23. Mr. Sibert called Store #1551 several times to follow up on his interview and request for an interpreter. During these calls Sibert was told either that the In-Store Recruiter was not available or was still working on his request.

24. Defendant knew about Sibert's disability because he told the In-Store Recruiter he was deaf when she called him to set up an in-person interview.

25. Defendant refused to provide Sibert with a reasonable accommodation for this disability.

26. Defendant failed to hire Sibert because of his disability in violation of 42 U.S.C. §§ 12112(a) and 12112(b)(5)(a) and (b).

27. The effect of the practices complained of in paragraphs 13 through 26 above has been to deprive Joel Sibert of equal employment opportunities and otherwise adversely affect his status as an applicant because of his disability.

28. The unlawful employment practices complained of in paragraphs 13 through 26 above were intentional.

29. The unlawful employment practices complained of in paragraphs 13 through 26 above were committed with malice or with reckless indifference to the federally protected rights of Joel Sibert.

## **PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, servants, employees, attorneys, all persons in active concert or participation with it, and successors, from engaging in any employment practice that discriminates based on disability.

1           B. Order Defendant to institute and carry out policies, practices, and programs which  
2 provide equal employment opportunities for qualified individuals with disabilities, and which  
3 eradicate the effects of its past and present unlawful employment practices.

4           C. Order Defendant to make whole Joel Sibert by providing appropriate back pay with  
5 prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary  
6 to eradicate the effects of its unlawful employment practices, including but not limited to front  
7 pay.

8           D. Order Defendant to make whole Joel Sibert by providing compensation for past and  
9 future pecuniary losses resulting from the unlawful employment practices described in  
10 paragraphs 25 through 31 above, including job search and related expenses, in amounts to be  
11 determined at trial.

12           E. Order Defendant to make whole Joel Sibert by providing compensation for past and  
13 future non-pecuniary losses resulting from the unlawful employment practices described in  
14 paragraphs 13 through 24 above, including emotional pain, suffering, inconvenience, loss of  
15 enjoyment of life, and humiliation, in amounts to be determined at trial.

16           F. Order Defendant to pay punitive damages for its malicious and reckless conduct, as  
17 described in paragraphs 13 through 24 above, in amounts to be determined at trial.

18           G. Grant such further relief as the Court deems necessary and proper in the public  
19 interest.

20           H. Award the Commission its costs in this action.

21           **JURY TRIAL DEMAND**

22           The Commission requests a jury trial on all questions of fact raised by this Complaint.

DATED this 10th day of September, 2017.

ROBERTA L. STEELE  
Regional Attorney

JOHN F. STANLEY  
Supervisory Trial Attorney

TERI HEALY  
Senior Trial Attorney

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN Y. REAMS  
Associate General Counsel  
Office of the General Counsel  
131 "M" Street NE  
Washington, D.C. 20507

BY: /s/ Roberta L. Steele  
Regional Attorney  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Seattle Field Office-San Francisco District  
909 First Avenue, Suite 400  
Seattle, WA 98104-1061  
Telephone (415) 522-3150

Attorneys for Plaintiff EEOC